PETER YEOW YEW TECK

v.

CHENG SIM MENG

HIGH COURT MALAYA, SHAH ALAM
LOW HOP BING J
[APPEAL NO: 12-9-1995]
7 NOVEMBER 1996

CIVIL PROCEDURE: *Appeal - Notice of appeal - Filing of - Whether to be filed in registry of High Court - Whether to be filed in registry of court appealed from - Order 49 r. 6(2) Subordinate Courts Rules 1980 - Scope and effect*

WORDS & PHRASES: *"Time limited for the filing of appeal to the Registrar of the High Court" - Order 49 r. 6(2) Subordinate Courts Rules 1980 - Proper meaning of*

The appellant in this case had appealed against the decision of the learned magistrate made in interlocutory proceedings. The appellant in consequence filed the notice of appeal in the registry of the magistrate's court, in compliance, purportedly, with the requirement of O. 49 r. 6(2) Subordinate Courts Rules 1980 ('SCR'). Before the learned judge, the respondent raised a preliminary objection that the appellant had filed the notice of appeal in the wrong registry and no appeal, therefore, has been 'brought' within the meaning of the said O. 49 r. 6(2). It was the respondent's contention that O. 49 r. 6(2) SCR made it incumbent upon the appellant to file the notice of appeal in the registry of the High Court, and that being so, the notice of appeal herein was incompetent and the High Court, as a result, has no jurisdiction to entertain the appeal.

Held:

[1] Order 49 r. 6 was enacted with the objective of devising a speedy short cut for appeals from subordinate court to High Court, from decisions other than that made after a trial. Its objective was to reduce the delay caused in the registration of appeals.

[1a] For the purposes of bringing an interlocutory appeal under O. 49 r. 6(2), it is mandatory for an appellant to do two things, namely (i) to file a notice in Form 140 within 14 days from the day the decision is pronounced and (ii) to serve a copy of the notice on every other party to the proceedings within the time limited for the filing of the appeal to the registrar of the High Court.

[2] The provision in O. 49 r. 6(2) cannot be interpreted to mean that the notice of appeal must be filed with the registrar of the High Court. The result of such an interpretation is that, while in an appeal after trial the notice of appeal is filed with the subordinate court as is set out in Form 140, in an interlocutory appeal, the notice of appeal has to be filed with the registrar of the High Court. Such an interpretation would require an amendment to Form 140 which O. 49 r. 6(2) has not provided for. Form 140, as it were, is addressed to 'The Registrar, Sessions Court at ... /The Magistrate at ...'.

[2a] The proper interpretation for Order 49 r. 6(2) must therefore be, that it did not intend that the notice of appeal in Form 140 be filed with the registrar of the High Court. As is provided in Form 140, the notice of appeal is to be filed with the subordinate court. The filing of a notice of appeal in the subordinate court, is essential in practice as it puts the subordinate court on notice.

[3] The expression 'within the time limited for the filing of appeal to the Registrar of the High Court' in O. 49 r. 6(2) SCR refers to the filing of the *appeal* (as opposed to the *notice of appeal*) to the registrar of the High Court. That this phrase did not say the 'notice of appeal' is significant, since a notice of appeal and an appeal are two entirely different things. The 'appeal' itself comprises the record of appeal properly filed with the registrar of the High Court.

[4] By the procedure to be followed in cases of appeals from the High Court to the Court of Appeal, as provided by r. 17 Rules of the Court of Appeal 1994 for instance, it is clear that the common denominator is that the notice must be filed in the registry of the court appealed from. This is also clear by the provision of r. 61 Rules of the Federal Court 1980. That being the case, it is difficult to say that O. 49 r. 6(2) SCR has intended to depart radically from the usual established practice of filing the notice of appeal in the registry of the court appealed from.

[5] This court, in the upshot, is unable to agree with *Datuk Bandar Kuala Lumpur v. Seman b. Amat & Anor* and therefore takes the view that in an interlocutory appeal, where notice of appeal is filed in the registry of the subordinate court, under O. 49 r. 6(2) SCR, the notice is proper and valid, and the High Court has the jurisdiction to hear the appeal.

[Preliminary objection overruled.]

Cases referred to:
Chin Choy & Ors v. Collector of Stamp Duties [1979] 1 MLJ 69 ***(refd)***
Datuk Bandar Kuala Lumpur v. Seman Bin Amat & Anor [1966] 3 CLJ 263 ***(refd)***
H Rubber Estates Bhd v. Director General of Inland Revenue [1979] 1 MLJ 115 ***(refd)***
Pandan Maju Sdn Bhd lwn. Dulon Industries Sendirian Berhad [1996] 3 AMR 3151 ***(refd)***
Yupaporn Seangarthit v. Neil Allan Campbell Webb [1996] 1 CLJ 45 ***(refd)***

Legislation referred to:
Rules of the Court of Appeal 1994, r. 17
Rules of the Federal Court 1980, r. 61
Subordinate Courts Rules 1980, O. 49 rr. 6(1), (2)
Subordinate Courts Rules Act 1955, s. 4

RS No. 12-9-95
For the petitioner - Balbir Singh; M/s Wan, Balbir & Assoc
For the defendant - Tong Veng-Ky; M/s Vincent Lim & Teoh

RS No. 25-70-96
For the petitioner - Jamilah Jamil; M/s Yacob Mat Yim & Partner
For the defendant - Low Chi Cheng; M/s Lim Kian Leong & Co

Reported by Ramli Isa

JUDGMENT

Low Hop Bing J:

Crucial Question Of Law

These two appeals raise a crucial and urgent question of law relating to the filing of a notice of appeal against a decision made by a subordinate court, other than a decision made after trial. For the purposes of brevity, the appeal is referred to as an interlocutory appeal and the decision as an interlocutory decision.

In these two interlocutory appeals, an identical question of law is raised by way of a preliminary objection on the ground that in an interlocutory appeal, the notice of appeal must be filed in the Registry of the High Court and a notice of appeal which is filed, e.g. in these two interlocutory appeals, in the subordinate court from which the appeal is preferred, clearly contravenes the provisions of O. 49 r. 6(2) of the Subordinate Court Rules 1980 (SCR). That being the case, the notice of appeal is incompetent and the High Court has no jurisdiction to entertain such an appeal.

Two Conflicting Decisions

At the moment, there are two reported decisions of the Kuala Lumpur High Court in which two judges have arrived at two opposite conclusions. One decision was given by Abdul Kadir b. Sulaiman, J in *Datuk Bandar Kuala Lumpur v. Seman bin Amat & Anor* [1996] 2 AMR 2584 and another decision was given by me in *Pandan Maju Sdn. Bhd. lwn. Dulon Industries Sendirian Berhad* [1996] 3 AMR 3151.

In the *Datuk Bandar* case, *supra*, Abdul Kadir bin Sulaiman, J held, *inter alia*, as follows:

> It is clear from an examination of O. 49 r. 6(2) that a notice of appeal in respect of decisions made by the court, other than a decision made after trial, must be filed with the Registrar of the High Court. Rule 6 is a provision which is distinct from the other provisions in O. 49, as indicated by the words 'Notwithstanding anything contained in this Order' which appears at the beginning of r. 6(l).
>
> As the current appeals relate to the decisions of the magistrate in interlocutory proceedings, the notices of appeal must be filed with the Registrar of the High Court. When a notice of appeal is filed in the wrong registry, no appeal is 'brought' within the meaning of O. 49 r. 6(2) of the SCR, and as such the jurisdiction of the judge in Chambers is ousted; it will therefore be illegal for the said judge to carry on hearing the so-called appeals.

In the *Pandan Maju* case, *supra,* I held that the notice of appeal filed in the Magistrate's Court for the aforesaid purpose is valid and in order.

In the face of these two conflicting decisions, and in view of the far-reaching implications raised in the preliminary objection herein, I am of the view that it is necessary and advisable to set out the grounds of my judgment in greater detail, as this matter will eventually have to be resolved more authoritatively by the Court of Appeal or the Federal Court, or even by the rules committee by way of a legislative amendment, for the avoidance of doubt, the achievement of clarity and certainty, and for the benefit of legal practitioners generally.

Objective Of O. 49 r. 6 SCR

Order 49 r. 6 reads as follows:

> 6(l) Notwithstanding anything contained in this Order, an appeal shall lie to a Judge in Chambers from any decision made by the Court other than a decision made after trial.

(2) The appeal shall be brought by filing a notice of appeal in Form 140 within 14 days from the day on which the decision was pronounced, and serving a copy of the notice on every the other party to the proceedings within the time limited for the filing of appeal to the Registrar of the High Court.

3. Within three weeks after the filing of the notice of appeal, the appellant shall file the record of appeal in the High Court and the record shall contain copies of:

(a) the application for the decision;

(b) the statement of claim, and where defence has been filed, the statement of defence;

(c) all affidavits filed in support of or in opposition to the application; and

(d) the decision appealed from, but shall not include the notes of evidence, the grounds of judgment or any memorandum of appeal.

The subordinate court rules committee, in exercise of the powers conferred by s. 4 of the Subordinate Court Rules Act 1955, has enacted O. 49 r. 6 with the objective of devising a speedy short cut for appeals from Subordinate Court to High Court, from decisions other than that made after a trial. The reason for the introduction of O. 49 r. 6 has been stated by Mahadev Shankar JCA in *Yupaporn Seangarthit v. Neil Allan Campbell Webb* [1996] 1 CLJ 45 CA as follows:

> The amendment to O. 49 r. 6 was brought into effect by PU(A) 193/93. Its objective was to reduce the delay caused in the registration of appeals ...

Where To File Notice Of Appeal

Two Parts In O. 49 r. 6(2)

For the purposes of bringing an interlocutory appeal under O. 49 r. 6(2), it is mandatory for an appellant to do two things, *viz:*

(1) to file a notice in Form 140 within 14 days from the day the decision is pronounced; and

(2) to serve a copy of the notice on every other party to the proceedings within the time limited for the filing of the appeal to the registrar of the High Court.

Under (2) above, apart from requiring service upon every other party to the proceedings, such service must be effected within the "time limited for the filling be the of appeal to the registrar of the High Court". What then is the meaning of "time limited for the filing of appeal to the registrar of the High Court"? ('the said provision').

The Interpretation Given In The Datuk Bandar Case

As stated above, in *Datuk Bandar Kuala Lumpur v. Seman bin Amat & Anor* [1966] 2 AMR 2584, Abdul Kadir bin Sulaiman J held that under the said provision, the notice of appeal must be filed with the registrar of the High Court. With the utmost respect to his Lordship, the result of his Lordship's interpretation ('the first interpretation') is that while in an appeal after trial, the notice of appeal is filed with the subordinate court as is clearly set out in form 140, in an interlocutory appeal, the notice of appeal has to be filed with the registrar of the High Court instead. Such interpretation would also require an amendment to form 140 which O. 49 r. 6(2) fails to provide for, since form 140 is addressed to "The Registrar, Sessions Court at ... The magistrate at ..." and the respondent or respondents. Further, while there is a prescribed code for the collection of fees in the form of praecipe for the filing of form 140 in the subordinate court, there is, I understand, no corresponding prescribed code for the filling of a notice of appeal in form 140 in the registry of the Kuala Lumpur High Court uses code A. 20 accepting the notice of appeal in form 140, but it is to be

noted that code A. 20 if for the filing of notice for direction for trial and not for the filing of a notice of appeal in an interlocutory appeal.

Alternative Interpretation

Order 49 r. 6(2) may, in my opinion, be given an alternative interpretation ie, O. 49 r. 6(2) did not intend that the notice of appeal in form 140 be filed with the registrar of the High Court. As is the notice of provided in form 140, the notice appeal is to be filed with subordinate court.

The alternative interpretation would maintain that in an interlocutory appeal, the notice of appeal must be filed in the subordinate court. The filing of a notice of appeal is the subordinate court is essential in practice as it puts the subordinate court on notice. This element is missed in the first interpretation.

The basic rule of interpretation is the literal rule in which the plain ordinary meaning is applied unless it leads to an absurdity. It is also known as the golden rule. In *Chin Choy & Ors v. Collector of Stamp Duties* [1979] 1 MLJ 69, Chang Min Tat FJ explained this rule as follows:

> Applying the words and phrases of a statute in their ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rule of grammar.

In *H Rubber Estates Bhd. v. Director General of Inland Revenue* [1979] 1 MLJ 115, 118, Gill CJ (Malaya) stated:

> The universal rule in construing statutes, as in construing all other written instruments, is that the grammatical and ordinary sense of the word is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further ...

The expression "within the time limited for the filing of appeal to the registrar of the High Court" taken literally in the ordinary meaning refers to the filing of the appeal (as opposed to the notice of appeal) to the registrar of the High Court. That it did not say the "notice of appeal" is in my view significant, since a notice of appeal and an appeal are entirely two different things. The "appeal" itself comprises, in ordinary language, the record of appeal properly filed with the registrar of the High Court.

In this connection, I am assisted by some useful guidance from the procedure of appeals from the High Court to the Court of Appeal. Form 1 of the Rules of the Court of Appeal 1994 (RCA) is addressed to the registrar of the Court of Appeal, the registrar of the High Court and the respondent. Rule 17 RCA provides that the notice of appeal is to be filed with the registrar of the High Court. This is similar in essence to the procedure under r. 61 of the Rules of the Federal Court 1980. The common denominator in the filing of the notice of appeal is that the notice must be filed in the Registry of the Court appealed from.

It is therefore difficult to say that O. 49 r. 6(2) of the Subordinate Court Rules is intended to depart radically from the usual established practice of filing the notice of appeal in the registry of the Court appealed from.

Conclusion

For all the above reasons, I am unable to agree with the decision of Abdul Kadir bin Sulaiman J in the *Datuk Bandar* case. I am of the view that in an interlocutory appeal, where notice of appeal is filed in the registry of the subordinate court, under O. 49 r. 6(2), the notice is proper and valid, and High Court has the jurisdiction to hear the appeal. The preliminary objection is hereby overruled, but there shall be no order as to costs.